

Appl. No. 10/527,737
Art Unit: 1655
Response dated December 14, 2007
Reply to Office Action of June 15, 2007

REMARKS

Claims 12-31 are pending in the present application. Claims 12-24, 29 and 30 have been withdrawn by the Examiner. Claims 25-28 and 31 have been rejected.

The Specification has been amended to include Applicants' claim of priority under 35 U.S.C. Section 119. The Examiner is kindly requested to enter the amendment to the specification and acknowledge the claim of priority in the next Office Action Summary.

1. Rejections under 35 U.S.C. Section 103

Claims 25-26 and 28 have been rejected over US Pat. No. 5,877,212 ("Yu") and Brit. J. Dermat. 200, Vol. 142, pages 991-1002 ("Leivo").

Claims 25-28 and 31 have been rejected over Yu and Leivo and further in view of US Pat. No. 6,379,719 ("Gilles").

Claims 25-28 and 31 have been rejected over Yu and Leivo and further in view of JP 59093010 A ("Ichimaru").

The rejections are traversed for the reasons hereinafter.

The Examiner has cited the three (3) factors of *Graham v. John Deere Co.*, which factors inform an analysis of the factual inquiries required for determining the obviousness or non-obviousness of claimed subject matter under 35 U.S.C. Section 103.

The 2nd factor calls for "Ascertaining the differences between the prior art and the claims at issue."

It is respectfully submitted that the Examiner's analysis of the 2nd factor of *Graham* is in error. Hence, all the Rejections applied by the Examiner in the Office Action do not comply with the *Graham* analysis under 35 U.S.C. 103 and are consequently defective, as explained hereinafter.

Claim 25 is the main claim under rejection and calls for:

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"A cosmetic preparation comprising: (a) at least one substance which effects a modulation of one or more dermal/epidermal junction components selected from the group consisting of plectin/HD1, entactin/nidogen, perlecan and combinations thereof; and (b) a component selected from the group consisting of UV protection factors, antioxidants and mixtures thereof (emphasis added)."

Thus, Claim 25 calls for, *inter alia*, "at least one substance which **effects a modulation of...plectin/HD1...**"

Claim 25, and the claims dependent thereon, do **not** call for the **use of plectin/HD1** as a cosmetic composition as claimed.

2. Examiner's analysis of the Prior Art under 2nd Factor of *Graham*

In **all** of the rejections, the Examiner describes the teaching of Leivo by the following Paragraph:

"Because plectin/HD1 proteins in the cytoplasm are recruited to blisters on skin, **the use of plectin/HD1 as a composition for skin will be helpful**. Thus, **an artisan of ordinary skill would reasonably expect that a protein useful for wound healing could be used as the skin composition** taught by the references. **This reasonable expectation of success would motivate the artisan to use plectin/HD1 in the reference composition**. Thus, **using plectin/HD1 is considered an obvious modification of the references** (emphasis added)."

Thus, the Examiner applies the teaching of Leivo in the rejections on the basis that Leivo teaches the use of plectin/HD1 in a skin composition.

As discussed above, however, the subject matter of the present claims is directed to a substance that effects the modulation of plectin/HD1. The claims do not call for plectin/HD1 as a component of a skin composition.

This is a difference between the prior art and the claims that the Examiner has not

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recognized under the 2nd factor of *Graham*, and which consequently results in a defective application of the *Graham* factors in all of the rejections of record.

Accordingly, the Examiner is kindly requested to reconsider and withdraw the rejections based on their defectiveness as applied to the *Graham* analysis under Section 103 of the statute.

A Notice of Allowance of Claims 25-28 and 31 is respectfully solicited.


The Undersigned would be pleased to discuss this matter with the Examiner in the event that any further clarification is required.

Fees Due

The Commissioner is authorized to charge the fee for a three-month extension of time and any other fees deemed due (or owing) to Deposit Account No. 50-1177.

Favorable reconsideration is respectfully solicited.

Respectfully submitted,



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